

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-221463; B-221464 **DATE:** March 12, 1986

MATTER OF: AT&T Communications

DIGEST:

When a determination is made by an agency to change, relax, or otherwise modify its requirements or its selection criteria, the agency should issue a written amendment to the solicitation so that the offerors receive notification of the agency's determination.

AT&T Communications protests the selection by the U.S. Geological Survey, Department of the Interior, Reston, Virginia, of GTE Sprint Communications Corporation as the primary interexchange carrier (PIC), under solicitation Nos. B003 and B004, for long-distance telephone services at two locations. AT&T essentially contends that the agency relaxed its requirements after receipt of proposals without amending the solicitations or otherwise notifying the offerors of the changed criteria for award.

We deny the protest because, while the agency erred in not amending the solicitations, the protester has failed to demonstrate any prejudice to its competitive standing that resulted from the agency's error. We also dismiss one aspect of the protest as untimely.

Background

Effective January 1, 1984, the American Telephone & Telegraph Company divested itself of its local exchange carriers pursuant to a divestiture agreement which also requires these local exchange carriers to provide "equal access" to all interexchange (long-distance) carriers and information service firms that provide interexchange services equivalent in quality to the services provided by AT&T. To implement this requirement, new geographical service areas, called Local Access and Transport Areas (LATAs) were established. The local exchange carriers may provide only intra-LATA telecommunications services, while

AT&T and other interexchange carriers may provide inter-LATA telecommunications services, subject to applicable federal and state regulatory authorities.

The local exchange carriers must generally notify customers at least 90 days prior to the availability of PIC equal access capability. A selection of a PIC must be made by each customer; failure to do so could result in an arbitrary assignment of the customer's account to any PIC at random. The General Services Administration (GSA) has advised agencies that it is "imperative" that a proper selection of a PIC be made. See Federal Information Resources Management Regulation, Appendix B, Bulletin 11, August 20, 1984; Id., Attachment A, June 4, 1984.

The Selection Process

Interior issued two solicitations, which it characterizes as informal "requests for information," for long-distance telephone services at Reston, and Menlo Park, California. The general process followed in making a PIC selection was as follows:

1. Publishing a synopsis in the Commerce Business Daily.
2. Providing respondents with a representative sample of recent charges for long distance services.
3. Providing the respondents with the agency's technical requirements.
4. Setting a date for receipt of information from the respondents.
5. Evaluating the responses and selecting a PIC.
6. Notifying the local exchange carrier and the selectee of the decision.

With respect to the agency's technical requirements, solicitation No. B003, as amended, and solicitation No. B004 contained the following mandatory and desirable technical requirements:

<u>Type</u>	<u>Requirement</u>
A. Mandatory	A method of providing for third party calls and/or collect calls either by use of access codes, credit cards, or other methods.

- | | | |
|----|-----------|---|
| B. | Mandatory | A method of providing credits in same billing month for erroneous calls and poor quality calls. |
| C. | Mandatory | Provision for a minimum of 150 account codes for billing purposes. |
| D. | Desirable | Long Distance Directory Assistance. |
| E. | Desirable | International Calling and assistance. |

Both solicitations also stated that the agency reserved the right to make "multiple service agreement awards" under the solicitation. Specifically, the solicitation stated that it was likely that separate awards would be made for domestic and international service coverage. The provision for multiple awards was included in each solicitation because several offerors questioned the propriety of having all services obtained from one source since apparently only AT&T could provide all mandatory combined services.

During evaluation of proposals, Interior states that "in this informal process," it considered a proposal to meet the requirements of the solicitation if the carrier offered only a portion of the mandatory services but also proposed that related mandatory services be obtained from another carrier. Thus, the PIC carrier chosen for domestic long-distance service was GTE Sprint although it did not comply with the mandatory solicitation requirement that the carrier provide a capability for third party and/or collect calls. The latter services were separately awarded to AT&T.

AT&T, which is joined in its protest by MCI as an interested party, contends that Interior improperly changed its award criteria by deciding to allow offerors to propose services which did not meet all of the solicitation's mandatory technical requirements for additional mandatory services such as operator-assisted collect calls. AT&T and MCI state that they were never informed of this change and that Interior should have issued an amendment to reflect its relaxed requirements despite the relative informality of the procedures employed. We agree.

It is a fundamental principle of competitive procurement that offerors be provided a common basis for submission of proposals. Host International, Inc., B-187529, May 17, 1977, 77-1 CPD ¶ 346. It is equally fundamental that when, either before or after receipt of proposals, the government changes or relaxes its requirements, it must issue a written amendment to notify all offerors of the changed requirements. See Federal Acquisition Regulation, 48 C.F.R. § 15.606 (1984). Here, it is not disputed that the agency specified mandatory technical features in its solicitations and that at least two offerors interpreted these mandatory requirements as prerequisites that had to be met to be eligible for any award, individual or multiple. When Interior made a determination to consider proposals as acceptable even if they only complied with a portion of the mandatory specifications, the agency should have notified offerors of this determination by written amendment. The fact that it did not means that the competition was conducted on an unequal basis. See Amdahl Corp, et al., B-212018 et al., July 1, 1983, 83-2 CPD ¶ 51.

Nevertheless, we must deny this protest because in the final analysis it does not appear that AT&T was prejudiced by the agency's error. This is because price negotiation with carriers for PIC selection is not possible since prices and services are established with the Federal Communications Commission in filed tariffs. AT&T has not even attempted to show that there would have been some impact on its price proposal if the solicitation had been amended to show changes in the evaluation criteria or to delete, for example, the requirement for third party calling or collect calls.^{1/} Thus, we must conclude that the same selection result would have occurred if the amendment had been issued. Accordingly, the record does not disclose that AT&T was prejudiced by the agency's error. See Fiber Materials, Inc., 57 Comp. Gen. 527 (1978), 78-1 CPD ¶ 422. To the extent that MCI argues that the agency's failure to issue an amendment prejudiced MCI as an offeror under the solicitation,^{2/} it should have raised these matters in a separate timely protest. MCI entered an

^{1/} Although AT&T's protest letter can be read to imply the elimination of these features is inappropriate, nothing in the protest suggests why this would be the case.

^{2/} MCI asserts it would have offered different service if it had been aware of the agency's requirements and thus may have been low. This assertion is presumably based on MCI's filed tariffs.

appearance in the case as an interested party by way of comments to the agency report--too late to assert its own substantive protest.

The protester also argues that the procurement methodology employed by Interior was "ambiguous" inasmuch as it was not clear whether the solicitations were negotiated request for proposals or some other informal process. We think this argument is untimely. Protests based upon alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of initial proposals must be filed prior to the closing date for receipt of proposals. 4 C.F.R. § 21.2(a)(1) (1985). Here, AT&T waited until after selection of the PIC contractor to complain about the procurement methodology, including the specific solicitation, that was employed. We therefore dismiss this argument as untimely.

The protest is denied in part and dismissed in part.

Harry R. Van Cleve
Harry R. Van Cleve
General Counsel